

This informational report includes two documents:

- “Draft Guidance for Conducting Reviews of Catch Share Programs”—proposed by the National Marine Fisheries Service and distributed on October 1, 2015
- Draft Council Staff Comments on Draft Guidance for Conducting Reviews of Catch Share Programs

The deadline for comment on the draft guidance, originally set for November 20, 2015, has been extended to January 29, 2016.

## DRAFT GUIDANCE FOR CONDUCTING REVIEWS OF CATCH SHARE PROGRAMS

### I. Introduction

Guidance for conducting reviews of all Catch Share Programs (CSPs) is needed to ensure consistency in reviews. In general, this guidance applies to CSPs established by the Regional Fishery Management Councils (Councils) or the Secretary of Commerce (Secretary). The purposes of this guidance are to identify key components of the review process and the review document, and identify important questions and issues associated with each. This guidance is based on a variety of sources, including the Magnuson-Stevens Fishery Conservation and Management Act (MSA),<sup>1</sup> particularly sections 301, 303, and 303A; the NOAA Catch Share Policy (CS Policy);<sup>2</sup> The Design and Use of Limited Access Privilege Programs (LAPPs) (Holliday and Anderson 2007);<sup>3</sup> reviews that have already been completed (Bering Sea and Aleutian Islands (BSAI) Crab Rationalization,<sup>4</sup> Amendment 80 (BSAI non-pollock Cooperatives),<sup>5</sup> and Gulf of Mexico (GOM) Red Snapper<sup>6</sup>); reviews currently underway and interim reports related to such reviews for various CSPs, including Gulf of Alaska (GOA) rockfish,<sup>7</sup> GOM grouper-tilefish Individual Fishing Quotas (IFQ),<sup>8</sup> Northeast Limited Access General Category Scallops IFQ,<sup>9</sup> Pacific groundfish trawl rationalization,<sup>10</sup> and Pacific sablefish permit stacking;<sup>11</sup> as well as discussions among National Marine Fisheries Service (NMFS) staff.

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<sup>1</sup> [http://www.nmfs.noaa.gov/sfa/magact/MSA\\_Amended\\_2007%20.pdf](http://www.nmfs.noaa.gov/sfa/magact/MSA_Amended_2007%20.pdf)

<sup>2</sup> [http://www.nmfs.noaa.gov/sfa/management/catch\\_shares/about/documents/noaa\\_cs\\_policy.pdf](http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf)

<sup>3</sup> <http://spo.nmfs.noaa.gov/tm/tm86.pdf>

<sup>4</sup> <http://www.npfmc.org/crabrationalization/>

<sup>5</sup> <https://npfmc.legistar.com/View.ashx?M=F&ID=3300713&GUID=DB925E16-602F-41BD-8690-8156BEC4FB82>

<sup>6</sup> <http://www.gulfcouncil.org/docs/amendments/Red%20Snapper%205-year%20Review%20FINAL.pdf>

<sup>7</sup> [http://www.npfmc.org/wp-content/PDFdocuments/catch\\_shares/Rockfish/RPPreview508.pdf](http://www.npfmc.org/wp-content/PDFdocuments/catch_shares/Rockfish/RPPreview508.pdf)

<sup>8</sup> <https://ifq.sero.nmfs.noaa.gov/ifqgt/main.html#>

<sup>9</sup> <http://www.nefmc.org/scallops/index.html>

<sup>10</sup> [http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish\\_catch\\_shares/index.html](http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/index.html)

<sup>11</sup> <http://www.pcouncil.org/resources/archives/briefing-books/june-2014-briefing-book/#June2014>

## **II. Applicability of Guidance**

A. Section 303A(c)(1)(G) of the MSA requires the Councils and Secretary to periodically conduct “formal and detailed” reviews of all LAPPs established after January 12, 2007. This requirement applies to LAPPs established under Secretarial authority as well. The date a program was established is the effective date of the action in the final rule that implemented the program.

B. The CS Policy indicates that periodic reviews are expected of all CSPs, regardless of whether the program is a LAPP or when it was put in place. Thus, the Northeast Multispecies Sector, which is not a LAPP, and CSPs implemented prior to January 12, 2007, should undergo periodic review. The CS Policy states: “NOAA recommends Councils apply the LAPP review and duration principles and requirements to all catch share programs.”

C. Reviews of the Western Alaska (AK) Community Development Program (CDQs) are not covered by this guidance as that program is subject to separate statutory requirements for review, , and the state of AK has responsibility for conducting that review.

## **III. Periodicity of Reviews**

A. Initial Reviews. For CSPs established after January 12, 2007, the initial review must commence no later than 5 years after the program was established. For CSPs established prior to January 12, 2007, the requirement to initiate the first review within 5 years after establishment does not apply. As such, the first review of these CSPs should be initiated no later than 7 years after the CS Policy went into effect (i.e., no later than the end of calendar year 2017), consistent with MSA’s requirement for subsequent reviews.

The MSA does not preclude an earlier review. However, to comply with the MSA requirement or CS Policy, the first formal review should not occur earlier than year 5. In determining when to commence the initial review, the Councils and NMFS should be mindful that it takes time for program participants and related entities (e.g., dealers/first receivers, processors, bait/tackle shops, etc.) to adjust to a new program. In turn, there will be a lag between when those behavioral adjustments occur and when they can be discerned, analyzed, and understood. The Councils and NMFS should also follow any timelines for additional program reviews specified by the fishery management plan amendment (Amendment) creating the CSP.

B. Subsequent Reviews. According to Section 303A(c)(1)(G) of the MSA, all subsequent reviews should coincide with scheduled Council review of the relevant fishery management plan (FMP), but no less

frequently than once every 7 years.<sup>12</sup> Thus, for CSPs established after January 12, 2007, the second review should be initiated before the end of the program's 12<sup>th</sup> year, regardless of when the initial review was actually completed. How and when Councils review their FMPs, or parts thereof, varies by Council. The Councils and NMFS should follow any timelines for additional program reviews specified by the Amendment creating the CSP and should not conduct reviews more frequently than every 3 years for the purpose of complying with the MSA requirement or CS Policy.

#### **IV. Process and Procedures**

A. Review Plan. A general plan for conducting future reviews should be developed when the CSP is being developed, or as soon as possible thereafter. This general plan should cover necessary data collections, data analyses/models, a timeline for implementing and/or completing each required task within that plan, as well as staff and funding requirements. Since the review will require data from the first day of the program, and preferably prior to the program's implementation, every effort should be made to ensure the necessary data collection programs are put in place when the program is being developed or implemented. Otherwise, potentially significant data gaps will be created which will later confound the analyses needed for the review. The first year or two of a program is critical with respect to discerning how program participants and related entities are adjusting to the program. Further, data collections associated with CSPs will most likely require Paperwork Reduction Act (PRA) clearance, and that process often takes at least 6 months. Similarly, if external assistance is needed to conduct certain analyses, the contracting process can also introduce delays.

The content of the general plan should be periodically refined, revised, and updated as additional information becomes available and issues are identified. For CSPs established by the Councils, it is recommended the appropriate Council(s) review a draft of the plan before it is finalized and significant work begins. Whenever possible, a final plan should be completed no later than one year prior to initiating the review, as this will ensure adequate time is available to conduct any necessary supplementary/specialized data collections. The timeline for conducting analyses associated with the review should take into account the availability of data and the length of time necessary to complete those analyses.

B. Review Team. Given the above, a review team should be formed to facilitate the review process. The review team should be created when the program is being developed and maintained thereafter to the extent possible. It is recommended the review team be composed of members of the Plan Development Team (PDT), or equivalent, who worked on the Amendment implementing or making significant changes to the program, as well as staff responsible for administering or overseeing the program. This will promote continuity in the program's development, implementation, evaluation, and revision process. The review team should have representation from the Council, Regional Office (RO),

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<sup>12</sup> As with a new program, if significant changes are made to an existing program, it will take time for program participants and related entities to adjust and lags between when the adjustments occur and can be discerned, analyzed, and understood should be expected.

Science Center (Center) and Office of Law Enforcement (OLE) staffs to ensure their respective issues and concerns are appropriately addressed in a timely manner.<sup>13</sup>

The distribution and nature of responsibilities for the review should be clearly identified as early as possible in the process, and one organization designated as the “lead.” The distribution of appropriate staff, data management responsibilities, and analytical capabilities varies by region and Council. However, each organization should play a role and, to the extent practicable and appropriate, assume responsibilities comparable to the roles and responsibilities each assumed in the program development and implementation process. For example, the Center should certify analyses within or used to inform the review comply with National Standard 2 to ensure reviews are based on the best available science. Similarly, RO staff should ensure, in consultation with NOAA General Counsel (GC), the review complies with all legal requirements and policy guidance.

C. Interim Reports. The review team or subset of the review team should generate an annual program report. If lack of resources precludes the creation of an annual report, then a biennial report is an acceptable alternative. These annual or biennial reports can serve to refine and revise the review plan and act as important source documents for the 5/7 year review.<sup>14</sup> Further, the annual/biennial reports will help to identify gaps in the available data and analyses and other unforeseen issues, in turn allowing time for these gaps to be filled and issues addressed prior to the conduct of the more formal and detailed review. A Stock Assessment and Fishery Evaluation (SAFE) report that adequately covers the program under review may be an acceptable alternative or at least an additional source document for the 5/7 year review. Although interim reports should make use of standardized approaches to the extent possible, like the 5/7 year reviews, specific content is a local determination.

D. External Input. Program participants and other entities have a vested interest in program performance and the outcomes arising from program reviews. Drafts of the 5/7 year program review document should be made available to interested stakeholders and Council advisory groups (e.g., Scientific and Statistical Committees (SSCs), Advisory Panels (AP), etc.), comparable to the process used for providing comment on and reviewing draft NEPA/Amendment documents. Further, it is recommended that interested stakeholders, particularly program participants, be given the opportunity to provide feedback on interim reports. Providing feedback on interim reports, both draft and final versions, can be handled informally.

E. Finalizing Reviews. The Council, RO, Center, OLE, and NOAA GC should “sign off” on or otherwise approve the review before it is considered final.<sup>15</sup> Along with team composition, this will ensure the review is a joint product that can be used for future management and scientific purposes. How each “signs off” on or “approves” the review is a local issue. Signing off on or approving the review does not necessarily mean that each organization agrees with all statements in the review (e.g.,

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<sup>13</sup> For CSPs created under Secretarial authority, team composition will vary to some degree, consistent with the composition of the PDT and staff overseeing the program.

<sup>14</sup> See Section I of this Guidance for examples of such reports in certain programs.

<sup>15</sup> For CSPs created under Secretarial authority, the “signees” will vary to some degree, consistent with the composition of the review team.

recommendations from those providing external input). However, it is meant to convey that the review is consistent with all legal requirements and policy guidance, is based on the best science available, and each organization concurs with the review's conclusions and final recommendations. After all of the organizations noted above have signed off on or approved the review, it should be considered final and therefore no changes should be made to it thereafter.

## **V. General Approach, Scope of Review, and Use of Standardized Approaches**

A. General Approach. As part of the initial development of a CSP, the Council and Secretary will have conducted an analysis of the program's expected effects (i.e., an ex-ante analysis) in the National Environmental Policy Act (NEPA)/Amendment document that created the program. Like reviews of regulatory actions conducted under EO 13563<sup>16</sup> and section 610 of the Regulatory Flexibility Act (RFA),<sup>17</sup> a 5/7 year review of a CSP is a retrospective evaluation of an established program. Thus, rather than analyzing the program's expected effects, the task in a 5/7 year review is to describe and analyze the effects that have actually taken place since the "baseline" time period prior to the CSP's implementation, or since the program's implementation (i.e., an ex-post analysis). A baseline period of at least 3 years is preferable. Thus, the initial review will compare and analyze the fishery before and after the program's implementation, to the extent necessary data prior to the program's implementation is available.

Additional data collection programs have been implemented in conjunction with most, if not all, CSPs, so the initial 5 year review may be somewhat limited by a lack of data for the time prior to when the CSP was established. However, subsequent reviews should not be similarly hindered as, ideally, all necessary data collection programs will be in place prior to those reviews. Even if pre-program data are somewhat limited, the review should describe and analyze the changes that have taken place since the program's implementation, with a general focus on performance trends over that time rather than performance in a specific year.

Because Council and NMFS staffs are familiar with creating NEPA/Amendment documents, it is recommended that the CSP review document adopt a similar structure. Following the standard structure of a typical NEPA/Amendment document, the review should contain the following: 1) purpose and need of the review (discuss legal/policy requirements), 2) goals and objectives of the program and the MSA, including the national standards, 3) history of management, including a description of management prior to the program's implementation, a description of the program at the time of implementation (including enforcement, data collection, and monitoring), and any changes made since the program's implementation or the previous review (including an explanation of why those changes were made), 4) a description of biological, ecological/environmental, economic, social, and

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<sup>16</sup> [http://www.nmfs.noaa.gov/sfa/laws\\_policies/economic\\_social/eo13563.pdf](http://www.nmfs.noaa.gov/sfa/laws_policies/economic_social/eo13563.pdf)

<sup>17</sup> [http://www.nmfs.noaa.gov/sfa/laws\\_policies/economic\\_social/rfa\\_revised\\_through\\_2010\\_jobs\\_act.pdf](http://www.nmfs.noaa.gov/sfa/laws_policies/economic_social/rfa_revised_through_2010_jobs_act.pdf)

administrative environments before and since the program's implementation, 5) an analysis of the program's biological, ecological/environmental, economic, social, and administrative effects, 6) an evaluation of those effects with respect to meeting the goals and objectives (i.e., program performance), including a summary of the conclusions arising from the evaluation, and 7) recommendations regarding potential changes to the program's structure, including the potential need for additional data collection and/or research.

Reviews should not be restricted to a particular length. The review should contain sufficient background information to provide the reader with the necessary context for understanding the analyses contained in the review.

However, for the sake of brevity, if particular information has not changed since the program was implemented or last reviewed (e.g., biology of the species), that information can be incorporated by referencing the appropriate document. Further, if a particular component of a program is the subject of a current management action, that component does not need to be addressed in a detailed manner within the review. A summary containing a description of, rationale for, and current status of the management action is sufficient. In addition, if a detailed analysis of a particular component of a program or certain aspect of that component has been conducted elsewhere, the detailed analysis can be incorporated by reference. However, a summary of the findings and their implications with respect to evaluating the program's performance should be included in the review. Finally, because recommendations are expected to come from a variety of sources, the review should clearly indicate the source of all recommendations and note commonalities and issues of divergent opinion.

In general, retrospective reviews and analyses contained therein should be easier to conduct than analyses in a typical NEPA/Amendment document since less uncertainty exists in a retrospective analysis relative to a prospective analysis. Further, since the review only looks at the effects of the CSP that was actually implemented, rather than various alternative CSPs that may have been implemented, these reviews should be less burdensome than the original NEPA/Amendment document.

B. Scope of Review. In general, the review should use as holistic an approach as possible given available data and resources. For CSPs that do not cover an entire fishery, where fishery is defined at the FMP level, the review may need to discuss components or sectors of the fishery not covered by the program due to significant interdependencies between the CSP and other components or sectors of the fishery. For example, the operations of vessels and associated businesses are frequently not limited to the boundaries of a specific CSP. When evaluating the program's effects on those operations, analyses should take into account the entirety of those operations, not just those which take place within the program's bounds. Otherwise, the analysis will likely mischaracterize the program's effects on those operations and thus program performance. The same perspective holds true for evaluating effects on human communities, fish stocks, and the ecosystem.

In instances where two or more CSPs are found to have significant interdependencies, joint program reviews would lead to a more holistic approach and thus more accurate analysis, as well as reduce administrative costs associated with the conduct of these reviews. However, if the CSPs were

established in different years, a joint initial review may not be feasible, particularly if they were established more than 5 years apart. Thus, joint reviews are more likely for subsequent rather than initial reviews.

C. Use of Standardized Approaches. When describing current conditions, changes since the baseline period, analyzing the effects of the program, and evaluating program performance, the review should make use of standardized performance indicators or metrics developed at the national level, to the extent possible. To the extent possible, reviews should also make use of additional indicators that may have been developed at the regional level and properly vetted by an appropriate scientific body (e.g., Center, SSC, etc.).

For example, with respect to biological conditions and effects, the reviews should make use of information contained in the most recent stock assessments. Additional information on other key biological indicators will also likely be necessary, depending on the program's goals and objectives (e.g., changes in bycatch, discard mortality, etc.). This information can be obtained from stock assessment reports, observer program reports, SAFE reports, and other sources.

When describing economic and social conditions and analyzing economic and social effects, reviews should make use of the NMFS Office of Science and Technology's (S/T) economic and social performance indicators to the extent possible.<sup>18</sup> Brinson and Thunberg (2013) demonstrate how many of the economic indicators can be used to evaluate CSP performance.<sup>19</sup> As they were attempting to compare performance across multiple CSPs, their analysis was limited to using indicators for which estimates were available across those CSPs. Walden, et al. (2014) subsequently demonstrated how to measure multi-factor productivity changes in CSPs.<sup>20</sup> Further, although Holland et al. (2014) indicates that sufficient data on the prices of Quota Shares (QS) and Quota Pounds (QP) are not available for every program,<sup>21</sup> a 5/7 year review should contain an analysis of trends in these indicators when sufficient data are available.<sup>22</sup> The QS price reflects expected economic profits in the long-term while the QP price reflects expected economic profits in the short-term. Both are critical to assessing the program's economic effects on participants, particularly if current data are insufficient to directly estimate net revenue or economic profits. Trends in these prices could be related to multiple components of the CSP and numerous other factors external to the program.

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<sup>18</sup> <http://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/indicators-definition/>

<sup>19</sup> <http://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/index>

<sup>20</sup> <http://spo.nmfs.noaa.gov/tm/TM146.pdf>

<sup>21</sup> <http://spo.nmfs.noaa.gov/tm/TM145.pdf>

<sup>22</sup> QS refers to the long-term catch privileges generally denominated as shares of the total allowable catch (TAC) for a species, area, and/or fishery sector and QP refers to the annual form of quota in a CSP.



Although some of S/T's indicators are not purely economic or social in nature (e.g., catch and landings, effort, cost recovery, etc.), they should still be used where appropriate. Also, the suite of economic and social performance indicators for CSPs is still under development and so the review team should check for updates during the review process.<sup>23</sup> If quantitative estimates of particular indicators are not available, a qualitative assessment is acceptable.

S/T's social indicators for CSPs are not as developed across all regions as the economic indicators. As an alternative or in addition to using the social indicators for CSPs, when analyzing effects on communities per National Standard 8, analysts should adapt the social indicators developed by Jepson and Colburn (2013) to assess community vulnerability, resilience, and dependency on the CSP to the extent possible.<sup>24</sup> In addition, the description of social conditions and analysis of social effects should cover safety at sea,<sup>25</sup> consistent with National Standard 10. It is recommended the review team consult with the National Institute for Occupational Safety and Health's (NIOSH) Alaska Pacific Office on issues related to safety related data and analyses.<sup>26</sup> NIOSH provided data that contributed to the analysis of safety at sea in the Gulf of Mexico Red Snapper 5-year review and conducted the analyses for the 5-year reviews of the Amendment 80 and Crab Rationalization CSPs in the North Pacific.

When analyzing the program's economic and social effects, it is strongly recommended the review assess the effects on "historical" participants who were previously but are no longer involved in the fishery or program (i.e., prior to the program's implementation or the last review) to the extent possible as well as current participants and related entities. An analysis of why the former no longer participate in the program is important to assessing the program's effects and its performance. A survey to assess current and historical participants' satisfaction with the program and changes in their well-being may also be particularly useful in analyzing the program's social and economic effects and thus is recommended.

Consistent with National Standard 1 and EO 12866,<sup>27</sup> the review should contain an assessment of the program's effects on net benefits to the Nation, keeping in mind that net benefits are not exclusively economic in nature. This assessment should be consistent with the Economic Guidelines for conducting cost-benefit analyses.<sup>28</sup> In particular, the identification of economic costs and benefits in the review should be consistent with this guidance. For example, increases in employment and tax revenues are

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<sup>23</sup> See <http://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/indicators-definition/>

<sup>24</sup> <http://www.st.nmfs.noaa.gov/humandimensions/social-indicators/index>

<sup>25</sup> Changes in safety at sea can also be covered in the description of economic conditions and analysis of economic effects.

<sup>26</sup> Requests for data and analytical assistance should be sent to Jennifer Lincoln, PhD, APO Director, at [jjlincoln@cdc.gov](mailto:jjlincoln@cdc.gov)

<sup>27</sup> [http://www.nmfs.noaa.gov/sfa/laws\\_policies/economic\\_social/eo12866.pdf](http://www.nmfs.noaa.gov/sfa/laws_policies/economic_social/eo12866.pdf)

<sup>28</sup> <http://www.nmfs.noaa.gov/op/pds/documents/01/111/01-111-05.pdf>

not economic benefits within a cost-benefit analysis. The latter is a transfer and the former is an example of an economic impact. Changes in economic impacts at the regional, state, and/or community level are also an important consideration and should be assessed as they are often of key interest to Council members and other stakeholders.

## **VI. Describing and Analyzing Program Performance**

In order to properly describe and analyze a CSP's performance, the review will need to address its various structural components. Addressing a particular component of the program may be fairly superficial in certain instances, such as when that component is not part of the CSP being reviewed.

Although it is preferable to address all of the program's components in the review, consistent with a holistic approach, some components are more important than others. If a program component is required or must be considered under the MSA, or the CS Policy says it should be evaluated, it should be addressed in a 5/7 year review. The following components meet one or more of these criteria: A) goals and objectives, B) allocations, C) eligibility, D) transferability, E) Annual Catch Limits (ACLs) and Accountability Measures (AMs), F) accumulation limits/caps, G) cost recovery, H) data collection/reporting, monitoring, and enforcement, I) duration, J) auctions and royalties, and K) new entrants. Conversely, the following components do not meet at least one of these criteria and thus need not be covered in the review but are recommended when circumstances warrant: L) fishery or species/gear covered and M) type of CSP.

A. Goals and Objectives. According to Section 303A(c)(1)(G) of the MSA, a primary goal of the review is to determine whether and to what degree the goals of the program and the Act have been met due to implementation of the program. The CS Policy indicates it is necessary to examine objectives as well, including those of the FMP (see p. iii and p. 7). Thus, the goals and objectives in this case include those identified in the implementing Amendment, the FMP, the CS Policy, and the MSA, particularly those specific to LAPPs, though the primary focus should be on those identified in the implementing Amendment.

In addition, the goals and objectives of the Amendment and FMP should be evaluated with respect to whether they are clear, measurable (at least qualitatively), achievable (i.e., are two or more objectives mutually exclusive?), and still appropriate under the current circumstances. Fishery performance changes over time, and for other reasons than the effects of the program or other management measures. Such changes should be taken into account when evaluating the efficacy of the original goals and objectives. If certain goals and objectives are found not to be clear, measurable, achievable, and/or still appropriate, the review should note any deficiencies, recommend specific revisions, deletions, or additions and provide a rationale for each recommendation.

When a goal or objective is found to be unclear, the review team should seek clarification from Council members or members of NMFS leadership directly involved with the program's development. If this approach proves unsuccessful, the review team should make its best attempt to interpret the Council's

or NMFS' intent in each case rather than not address it. A common example of an unclear goal or objective is when an objective is stated in the form of an action that was taken in the Amendment (e.g., allocate a portion of the total available scallop harvest to the general category scallop fishery). The action is not the objective but rather the tool used to achieve that objective. The team should make its best effort to discern what that action was meant to achieve using the identified approaches.

Another complication review teams are likely to encounter is the lack of specific performance standards to evaluate whether, or to what extent, the goals and objectives have been met. For example, a Council may have indicated that a goal of the program is to reduce overcapacity. Such a goal tells the review team the direction of the desired change in overcapacity, but not the magnitude of the desired change. If the Council actually meant to indicate that their goal was to eliminate overcapacity, then the goal needs to be clarified. If it has a particular target level of reduction in mind, or alternatively a particular level of harvesting capacity, then that level should be stated explicitly in the FMP. Thus, one specific purpose of the reviews is to encourage Councils and NMFS to clearly identify specific performance standards that can be used in assessing whether, or to what extent, the goals and objectives have been met.

If the program is performing as expected at the time of implementation, then the various goals and objectives either should have been achieved or substantial progress should have been made towards achieving them. Further, net benefits to the Nation should be maximized under the program relative to any alternative CSPs or variants of the existing program. If the analysis concludes otherwise, such conclusions may serve as the basis for recommending changes to the program, including its potential elimination.

B. Allocations. Section 303A(c)(5) of the MSA requires initial allocations to be fair and equitable under all LAPPs. Further, according to the CS Policy, CSP reviews should examine existing allocations and evaluate whether the existing allocations are those that maximize net benefits to the Nation, consistent with National Standard 1 and EO 12866. Specifically, the CS Policy states: "For all fishery management programs, including catch shares, the underlying harvest allocations to specific fishery sectors (e.g., commercial and recreational) should be revisited on a regular basis, and the basis for the allocation should include consideration of conservation, economic, and social criteria used in specifying optimum yield and in furtherance of the goals of the underlying FMP." The CS Policy also states, "in existing catch share programs, this evaluation of allocations should be part of the MSA-mandated 5-year review." Further, "if the underlying allocation between sectors for a given fishery has not been reviewed by the Council since a LAP was initially approved, the Council should include such an assessment as part of its 5-year review unless there are compelling reasons not to do so. The mandatory 5-year review for each LAP is an appropriate time for a review and assessment of a given fishery's allocations since the fishery should have benefited significantly during its extended period of management under the LAP."<sup>29</sup> (emphasis added)

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<sup>29</sup> An LAP is a limited access privilege.

Thus, the allocations to be reviewed according to the CS Policy include the allocations between entities within the program, the allocations between sectors (e.g., gear types) within the program, and the allocations between the commercial and recreational sectors in instances where both sectors harvest the species covered by the CSP. Since a primary purpose of reviewing allocations is to ensure they are resulting in the greatest net benefit to the Nation, it is appropriate to review all allocations directly related to the program.

In the analysis and evaluation of allocations between entities, existing caps/limits on QS and QP should be explicitly taken into account. Thus, any recommendations to change those allocations should consider the potential for entities to exceed the existing caps/limits on QS and QP under an alternative allocation and, in turn, the possibility they would be forced to divest under a different allocation or the existing caps/limits need to be reconsidered.

Because an evaluation of allocations between sectors as well as entities in the program may require considerable time and resources, and is expected to be analytically complex, it may be appropriate to conduct the detailed analysis separately from the other components of the review. As stated in Section V, part A, of this guidance, the detailed analysis can be incorporated by reference and the review need only contain a summary of the analytical findings and a discussion of their implications with respect to evaluating the program's performance. In addition, if the underlying allocation between sectors is the subject of a current management action, that would be a compelling reason not to address it in the 5/7 year review. As stated in Section V, part A, of this guidance, a summary containing a description of, rationale for, and current status of the management action is sufficient for this review. Other compelling reasons may exist for not addressing the underlying allocation between sectors, but would need to be determined on a case by case basis.

The Council Coordination Committee and NMFS' Office of Sustainable Fisheries (SF) has developed policy guidance and S/T is developing technical guidance with respect to reviewing allocations. Thus, specific guidance on reviewing allocations will be provided in those documents and is incorporated in this guidance by reference. Additional guidance and background material can be found in Plummer, et al (2012)<sup>30</sup> and Morrison and Scott (2014).<sup>31</sup>

In addition, consistent with the general guidance on the use of standardized approaches, reviews should analyze changes in concentration using the Herfindahl–Hirschman Index (HHI), as prescribed by the joint guidance from the Department of Justice and Federal Trade Commission,<sup>32</sup> and distributional changes (e.g., revenue, landings, QS, QP, etc.) using the Gini coefficient, consistent with S/T's performance indicators. The analysis of distributional effects should also examine whether small entities have been disproportionately affected relative to large entities, consistent with the RFA and the CS Policy.

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<sup>30</sup>[http://www.nmfs.noaa.gov/sfa/laws\\_policies/national\\_standards/documents/plummer\\_allocationfishharvests\\_tm115\\_web\\_final.pdf](http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/plummer_allocationfishharvests_tm115_web_final.pdf)

<sup>31</sup> [http://www.nmfs.noaa.gov/sfa/management/councils/ccc/2014/Feb/laws\\_guidance\\_fisheries\\_allocation.pdf](http://www.nmfs.noaa.gov/sfa/management/councils/ccc/2014/Feb/laws_guidance_fisheries_allocation.pdf)

<sup>32</sup> <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>

C. Eligibility. Section 303A(c)(1)(D) of the MSA indicates that eligibility requirements must be established for LAPPs. Reviews should evaluate eligibility requirements regarding who is allowed to hold QS or QP (e.g., U.S. citizenship, owner on board provisions, etc.). The review may determine that certain restrictions on eligibility are inhibiting or precluding the achievement of certain objectives and thus may recommend these restrictions be relaxed or eliminated. The review may also indicate that additional restrictions are necessary to achieve particular objectives.

D. Transferability. Section 303A(c)(7) of the MSA requires a policy and criteria for the transferability of privileges be established in LAPPs. All existing CSPs in the United States allow for at least some transferability of QS or QP. Transferability is generally thought to improve technical efficiency and thus aid in achieving economic efficiency in a fishery, consistent with National Standard 5. Therefore, restrictions on transferability are thought to result in technical and economic inefficiency. However, economic efficiency is not a CSP's only objective. Restrictions on transferability may serve to meet other objectives, such as equity, per National Standard 4, providing for the sustained participation of and minimizing adverse economic effects on fishing communities, per National Standard 8, or reducing adverse effects on particular types of habitat (e.g., Essential Fish Habitat). The review should determine whether existing transferability provisions are conducive to achieving the specified objectives, keeping in mind that trade-offs often exist between objectives.

E. ACL/AM/Quota performance. Except for stocks with annual life cycles and those managed under international agreements, all stocks potentially managed by CSPs should have ACLs and AMs, per section 303(a)(15) of the MSA. Because CSPs typically serve as an AM for these stocks, reviews should discuss whether the program has helped to keep harvests/landings within the applicable limit(s). If overages have occurred, the frequency and magnitude of such overages should be discussed along with an analysis of why they occurred. The review should also describe and analyze changes in the status of all stocks within the CSP. Specific attention should also be paid to the performance standards for ACLs and AMs contained in the NS1 guidelines (see CFR 600.310(g)(4)). In addition, the review should assess changes in bycatch and discard mortality to determine whether the program is minimizing bycatch to the extent practicable, consistent with National Standard 9. The review should also analyze whether the program is encouraging full utilization of the available ACL, TAC, or quota. If full utilization is not taking place, the review should assess why this is the case. Full utilization of the ACL, TAC, or quota should not be confused with achieving OY, which involves the consideration of many other factors, or utilization of available harvesting capacity, since harvesting capacity is not determined by the available ACL, TAC, or quota.

F. Accumulation limits/caps. Section 303A(c)(5)(D) of the MSA requires Councils and NMFS to establish appropriate limits or caps to prevent the excessive accumulation of harvesting privileges. The accumulation of excessive shares is thought to potentially create market power in the product market, input markets (e.g., gear, bait, labor, etc.), and/or the markets for QS and QP. Market power creates economic inefficiency, contrary to National Standard 5. Even if market power is not created, excessive shares are also to be avoided for equity/distributional reasons, consistent with National Standard 4, National Standard 8, and section 303A(c)(5)(D)(ii) of the MSA. Reviews should analyze and evaluate the

equity/distributional impacts of existing caps and the impacts those caps have had on the creation of market power by affected entities.

In addition, Holliday and Anderson (2007) indicate that a primary concern with accumulation limits and caps is their ability to prevent firms from being technically efficient (i.e., firms could produce more output with their current inputs, or they could use less inputs to produce their current output). Technical inefficiency would in turn prevent firms from fully utilizing existing economies of scale and producing at the minimum average cost per unit of harvest (i.e., firms are also productively inefficient). Because caps on QS do not necessarily limit a firm's production in a given year, and QS owners can purchase additional QP, this concern primarily applies to caps or limits on QP. Reviews should analyze whether and to what extent QP caps or limits have generated technical inefficiency for firms operating in a CSP.

As with allocations, an analysis of market power is expected to be analytically complex and therefore may require considerable time and resources. Thus, it may be appropriate to conduct the detailed analysis separately from the other components of the review. In that case, the review need only contain a summary of the analytical findings and a discussion of their implications with respect to evaluating the program's performance. An analysis of market power in the Mid-Atlantic Surf Clam/Ocean Quahog Individual Transferable Quota (ITQ) program has already been conducted<sup>33</sup> and was the subject of a review by the Center for Independent Experts (CIE).<sup>34</sup> An analysis using the same approach has also been conducted for the Northeast Multispecies Sectors program,<sup>35</sup> which was also reviewed by the CIE.<sup>36</sup> However, the conclusions of the two CIE reviews differ with respect to the appropriateness of the approach and data used to reach the conclusions and recommendations in the respective analyses. Analysts are advised to take into account the concerns and deficiencies noted in the CIE review of the analysis for the Sectors program when conducting market power analyses.

Further, the review should explicitly address whether existing data collection and monitoring programs are sufficient to accurately determine each entity's ownership level and thus whether entities are exceeding the existing caps. The review should also address whether the caps are being applied at the appropriate levels to ensure they are serving their intended purpose. Since caps typically apply to all "persons" or "entities," the review team should determine whether "persons" and "entities" are being identified in the program in a manner consistent with the Council's intent and other agency practices and guidance (e.g., accounting for affiliation, consistent with the Small Business Administration's regulations, where practicable). For example, if the caps are being applied in a manner that precludes

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<sup>33</sup> [http://www.nefsc.noaa.gov/read/socialsci/pdf/SCOQ\\_ITQ\\_Exc\\_Share\\_Rec\\_2011-05-03.pdf](http://www.nefsc.noaa.gov/read/socialsci/pdf/SCOQ_ITQ_Exc_Share_Rec_2011-05-03.pdf)

<sup>34</sup> [http://www.nefsc.noaa.gov/read/socialsci/pdf/CIE\\_report\\_final.pdf](http://www.nefsc.noaa.gov/read/socialsci/pdf/CIE_report_final.pdf)

<sup>35</sup> [http://www.nefmc.org/nemulti/planamen/Amend%2018/compass\\_lexecon/NEMFC%20Report%20Final.pdf](http://www.nefmc.org/nemulti/planamen/Amend%2018/compass_lexecon/NEMFC%20Report%20Final.pdf)

<sup>36</sup> [http://s3.amazonaws.com/nefmc.org/6a\\_CL-peer-review-reports.pdf](http://s3.amazonaws.com/nefmc.org/6a_CL-peer-review-reports.pdf)

the estimation of an appropriate HHI or Gini coefficient, that should be noted and addressed in the review.

One of the anticipated effects of limits and caps is to limit the degree of consolidation within the fleet. Consolidation would typically be expected to result in a reduction in capacity and overcapacity, which is a goal of most CSPs. Analyses of changes in capacity and overcapacity should be conducted in a manner consistent with the terminology and methods outlined in NMFS' National Plan of Action for the Management of Fishing Capacity.<sup>37</sup>

G. Cost Recovery. The review should discuss whether a cost recovery program is in place, per Section 303A(e) of the MSA, the cost recovery fee percentage, any changes to the fee, and the amount of fees collected on an annual basis. According to the CS Policy, "Incremental government costs for management, data collection and analysis, and enforcement of limited access privilege programs shall be recovered from participants as required by the MSA." The review should determine whether the program is assessing fees in a manner such that all incremental costs are included in the assessment, whether the collected fees cover all incremental costs (i.e., does the 3% cap imposed by MSA preclude collecting fees to cover all incremental costs?), and evaluate the current economic effect of these fees on program participants (e.g., what is the reduction in gross revenue, net revenue, or profits on average per participants?). Any compliance or enforcement issues related to cost recovery should also be discussed. If the program does not include cost recovery, the review should include an explanation of that decision along with a discussion of plans to develop such a program in the future, where applicable.

H. Data Collection/Reporting, Monitoring, and Enforcement. According to Section 303A(c)(1)(H) of the MSA, each LAPP must include "an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems." Thus, the review should contain a description and assessment of the existing data collection, monitoring, and enforcement programs (e.g., observers, logbooks, economic data reporting, etc.), including a discussion of any changes since the CSP's implementation or the previous review. Specific attention should be paid to assessing whether the existing programs are sufficient to accurately and thoroughly assess the program's performance relative to the various goals and objectives.

Important data gaps or deficiencies, including gaps in the ability to validate collected data, should be identified and recommendations provided for how to fill those gaps or correct any deficiencies. Cost estimates for filling any gaps or deficiencies should be provided to the extent possible so that a net benefit assessment can be conducted, as certain data improvements may be cost prohibitive given current resources and other factors. In addition, particular attention should be paid to assessing whether the reporting burden on CSP participants is being minimized to the extent practicable, consistent with PRA. A customer satisfaction survey may be useful in discerning participants' views on this issue. It may also be useful to evaluate whether current CSP data collection programs are redundant with other existing programs and provide recommendations for eliminating overlapping

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<sup>37</sup> <http://www.nmfs.noaa.gov/op/pds/documents/01/113/01-113-01.pdf>

requirements. In general, potential means to reduce reporting burden should be identified and recommendations provided as to which are currently practicable.

Specific attention should be given to describing and assessing the use of electronic technologies versus paper-based and other more labor intensive methods, particularly with respect to their effect on the accuracy of the collected data and resulting statistical estimates but also with respect to their effect on the ability to engage in real time reporting. In general, electronic reporting is more conducive to achieving real time reporting. Another purpose of this assessment is to determine whether the administrative costs associated with data collection and monitoring are being minimized to the extent practicable, as these costs are either borne by industry via cost recovery fees or the public via tax collections. Practicable in this case means without reducing the accuracy of the data and resulting statistical estimates to scientifically unacceptable levels. Potential cost saving changes should be identified and recommendations provided as to which are currently practicable.

With respect to enforcement, particular attention should be paid to assessing whether the current enforcement provisions and activities, including resources for conducting the latter, are sufficient to ensure a high rate of compliance with program requirements. Wide non-compliance can adversely affect the ability of other CSP attributes to achieve their desired goals and objectives. What is considered a sufficiently “high” rate of compliance is another example of a performance standard that should be specified.

Although cost recovery, data collection/reporting, monitoring, and enforcement should be addressed separately, a description and overall assessment of the CSP’s administrative costs should be provided to determine whether total administrative costs are being minimized to the extent practicable, consistent with National Standard 7. It is quite possible there will be trade-offs in the various types of administrative costs. If the review indicates various types of improvements may be necessary to achieve the CSP’s goals and objectives, the Council and NMFS will want to know the potential change in total administrative costs associated with such in addition to specific increases.

I. Duration. The review should indicate the lifespan of catch privileges within the CSP. QS are not issued in perpetuity. According to Section 303A(f) of the MSA, their lifespan is limited to 10 years if the program was established after January 12, 2007, though they will be renewed if not revoked, limited, or modified.<sup>38</sup> The review should assess whether the current duration of catch privileges is still appropriate, given the CSP’s goals and objectives and other factors (e.g., lending practices of financial institutions). Economic theory indicates that, the longer a catch privilege’s duration, the greater will be its economic value as an asset. Higher prices for QS will benefit current holders but also increase entry costs for new entrants. Recommendations to change the duration should keep this in mind.

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<sup>38</sup> For example, see the rules to revoke inactive QS in the wreckfish ITQ program (<https://www.federalregister.gov/articles/2012/09/26/2012-23731/fisheries-of-the-caribbean-gulf-of-mexico-and-south-atlantic-snapper-grouper-fishery-off-the>) and the Pacific halibut/sablefish IFQ program (<https://www.federalregister.gov/regulations/0648-AX91/revoke-inactive-quota-share-and-annual-individual-fishing-quota-from-a-holder-of-quota-share-under-t>)



J. New Entrants. The issue of new entrants is one that cuts across multiple program design features, including but not necessarily limited to allocations (e.g., is there a set-aside?), transferability (e.g., do the transferability rules make it more or less difficult for new entities to participate in the program?), duration (are QS prices increasing over time as a result of the QS' duration?), and auctions (e.g., are auctions being used to provide another means for new entities to participate in the program?). An additional consideration is whether loan programs have been established to help new entities participate in the program, consistent with Section 303A(g) and 303A(c)(5)(g) of the MSA. Programs to assist new entrants are supposed to be considered when CSPs are initially developed. From an economic perspective, an assessment of the costs of entry should be provided, along with a determination of whether entry costs have increased to the point where market power is being exercised and economic inefficiencies are being created. A discussion of equity/distributional considerations should also be provided, including an assessment of any inter-generational effects.

K. Auctions and Royalties. The review should indicate whether the use of auctions and collection of royalties were considered when the program was implemented or have been subsequently considered. For CSPs implemented after January 12, 2007, section 303A(d) of the MSA requires Councils and NMFS to consider the use of auctions or royalties for the initial or any subsequent distribution of limited access privileges. Royalties and auctions are means to collect resource rents and return some of the economic value of the resource to the general public. Resource rent is the difference between the price at which fish can be sold and the respective production costs which include a normal return to the privilege holder. Thus, royalties and cost recovery fees are not synonymous.

L. Fishery or Species/Gears Covered. Because of interdependencies that generate spillover effects on, or result from the management of, other species or fisheries, the existence or magnitude of which may not have been expected or intended, the Council or NMFS may want to consider changing the CSP's scope when those interdependencies and spillover effects are significant. When vessels and businesses operate in multiple fisheries or components of fisheries with different management systems (e.g., CSP vs non-CSP or multiple CSPs), it is analytically difficult to separate the effects of the various management systems on those vessels and businesses and thus assess the performance of each, particularly with respect to determining whether the CSP being evaluated is achieving its goals and objectives. Further, the interdependencies between the different management systems with respect to their effects on vessels and businesses may interfere with and possibly preclude achieving the goals and objectives of each CSP. These issues would be particularly acute in situations where there is significant overlap in the vessels and businesses that participate in multiple CSPs or in a CSP and one or more fisheries not managed under a CSP.

In addition to looking at issues arising from interdependencies and spillover effects, a goal of CSPs is to take advantage of potential economies of scale in management (i.e., minimization of management costs), consistent with National Standard 7. In cases where the review determines there are significant interdependencies or spillover effects between a CSP and another CSP or alternative management system, or significant economies of scale in management could but are not being realized, it is recommended reviews evaluate whether the current scope of the program is still preferable to other

alternatives. Examples of potential organizational changes include adding or removing species or gear types from a program, merging separate CSPs, or reallocating species or gears across CSPs.

M. Type of CSP. There are several types of CSPs. With the exception of the CDQ program, other CSPs in the United States are in the form of ITQs, Cooperatives (or cooperative like structures, such as Sectors), or some combination thereof. If the review determines there are numerous and serious problems with the existing program that likely cannot be solved by modifying the existing program in its present form, it is recommended reviews evaluate whether the CSP's current form is still preferable to other alternatives.



## Pacific Fishery Management Council

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DATE

Dr. Alan Risenhoover  
Director  
Office of Sustainable Fisheries  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
NOAA/NMFS  
1315 East-West Highway, Room 14743  
Silver Spring MD 20910

Re: Comments on “Draft Guidance for Conducting Reviews of Catch Share Programs” and request for an extension of comment deadline through March 21, 2016

Dear Dr. Risenhoover:

We offer the following as staff comments on the “Draft Guidance for Conducting Reviews of Catch Share Programs” and request more time for a thorough review by our Council and its advisors. We appreciate the extension of the comment period from the originally announced November 20, 2015 deadline to January 29, 2016, however, the announcement that the draft guidelines would be coming out for review came too late for prioritization of a dedicated agenda item on the guidelines for the November 2015 Pacific Council meeting. While we were able to have some truncated discussion of the guidelines at our November meeting, the Pacific Council was unable to give them the full consideration that guidelines of this significance warrant, that is, by scheduling a dedicated agenda item open to public comment with solicited advice for the Council advisory bodies. On that basis, we request an extension of the comment period until at least one week after our March 2016 Pacific Council meeting, which ends March 14.

The perennial challenge in drafting guidelines is doing so outside the context of a specific situation. With respect to a program review, those specifics include the policies to be analyzed, the areas of concern which have developed in the context of their application, and the governmental resource constraints and important competing demands for those resources that will occur at the time of the review. When drafting guidelines outside of the constraining context, care must be taken not to set up expectations which cannot be practically met in the ultimate context in which they are applied, thereby generating the impression of failure—in this case, the impression that a review was inadequately conducted. A way forward is needed which takes into account the pragmatics of limited resources while at the same time providing useful guidance—a bridging between the ideal and the real world of limited capacities. To that end, we offer some general comments and have attached a list of more specific comments.

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First, the guidelines should remain general and adopted regional operating agreements should be relied on to specify the process by which National Marine Fisheries Service (NMFS) and the Council will work together to provide a review. For the Pacific Council, given sufficient resources, we would expect that as with other Magnuson-Stevens Act (MSA) actions the review would be coordinated in the Council forum where: NMFS participates cooperatively side-by-side with state, tribal, and Council staff; appropriate review team composition is determined; scientific information is reviewed by the Scientific and Statistical Committee; and NMFS is represented in decision authority by a single voice. Once the Council review process is completed, then the Secretary would make a determination as to whether or not the review meets the requirements of the MSA. In contrast, the guidelines specify that a lead should be designated without identifying who will be responsible for designating the lead, do not mention state and tribal partners, specify that the plan review team should be the original plan development team, specify that the science centers should review the scientific information, and specify that the Council and four separate divisions of NMFS/National Oceanic and Atmospheric Administration (NOAA) would each sign off on the review. In addition to these differences between the typical Pacific Council process and these guidelines, we note that the guidelines do not take into account that in situations of high controversy it might be most appropriate that the original plan development team *not* be the team that reviews the plan. Further, requiring four independent NMFS sign-offs as part of a Council process could lead to confusion regarding NMFS positions, and create an inefficient, lengthy loop as to when version adjustments are reviewed by the Council or any of the four NMFS/NOAA divisions. The regional processes and project managers should be trusted to most efficiently organize and allocate the project resources with the contexts present at the time of the review and as guided by regional operating agreements. A Secretarial review process on an end-document coming from the Council forum can be used to provide the opportunities for any and all internal NMFS sign-offs.

Second, the guidelines include new annual or biannual interim reporting requirements not required by the MSA. Further, it is anticipated that such interim reports go through a draft and finalization process with opportunity for public comment. While it is suggested that the feedback process “can be handled informally,” it is not clear what such informality means in the Council process and how such informality would be provided while maintaining an open, transparent public process. Such new requirements should not be taken lightly in that they inevitably displace or degrade the quality of work in an overburdened process. Such displacements and degradations then compound inefficiencies when the consequences of such inadequacies are encountered and must be dealt with in the future. Overall performance of the fishery will be monitored in the Stock Assessment and Fisheries Evaluation document, and critical failures will become apparent as part of the ongoing management activities. Most likely, new catch share programs will result in the generation of some new tables and data summaries for annual and biannual management processes, but the local managers should be trusted rather than indiscriminately prioritizing the generation of interim processes and reports over other regional management needs.

Third, the draft guidelines statement that “if a particular component of a program is the subject of a current management action, that component does not need to be addressed in a detailed manner within the review” is confusing. Generally, catch share programs function as an integrated whole, and it is sometimes difficult to draw lines between particular components or the effects of those components. The guidelines recommend that the review follow a National

Environmental Policy Act-type structure. In such a structure, cumulative effects sections address past, present, and reasonably foreseeable future actions. We suggest that any program component under revision at the time of the review be handled in a comparable section rather than not addressing the component “in a detailed manner.”

Fourth, the recommendation that the source of all recommendations should be tracked and summarized, cross-referencing to note commonalities and differences, is unnecessarily burdensome and fails to recognize the nature of a collaborative process. Public comment will certainly be kept for the administrative record, but if the collaborative process results in a set of recommendations that are collectively endorsed, the origin of the recommendation is not relevant to the result. Further, in such a dialogical process it is often not possible to identify the source of an idea for a recommendation. Finally, where a particular partner entity strongly disagrees with a recommendation, an opportunity is often provided for a minority report, so all voices have the opportunity to be represented.

Fifth, the guidelines cite several studies as those which should be used or referenced during the review (e.g. Section V.C, page 8). In order to maintain the relevance of the guidelines across time it might be more efficient to list such documents in a separate technical resources document which could be updated as new information and studies become available. Additionally, the language recommending these studies should be modified to acknowledge that, depending on the particular circumstances and concerns being addressed, there may be better alternative sources.

Sixth, there are some areas where the guidelines get into unnecessary detail and seem to be making unstated and inapplicable assumptions about the particular configuration of the catch share program being reviewed. For example, with respect to the reconsideration of intersector allocations this statement is made:

...any recommendations to change those allocations should consider the potential for entities to exceed the existing caps/limits on QS and QP under an alternative allocation and, in turn, the possibility they would be forced to divest under a different allocation or the existing caps/limits need to be reconsidered. (p. 11)

This statement is inapplicable to programs in which limits are expressed as a percent. At the same time, there are comparable considerations that would have to be taken into account (e.g., effect on total quota pounds (QP) available to an individual). This guidance on the effects of reallocation on caps is one among many details that will have to be considered, only a few of which are called out in the guidelines. This leads to unevenness in the level at which the guidelines address the program review. These details of analysis should be left for regional efforts to develop.

As a final note we would like to emphasize the tremendous workload that is potentially embodied in the guidelines as currently specified. In addition to the catch share program review, not only is a detailed review of the underlying allocations required but also a review and cost assessment of the data system with respect to the potential for substitution of electronic technologies. Such assessments are no small matter and in aggregate might equate to a workload associated with more than two major environmental impact statements. Programs with as broad of a sweep as many catch share systems touch in important ways on many different subsystems,

including stock assessment methodologies, which, like intersector allocations, also impact the total amount of fish available for the catch share program. However, as a practical matter, not every system can be included in a review of the catch share program. We would encourage resistance to the temptation to take the opportunity of the catch share program review to accomplish reviews of related subsystems.

Thank you for the opportunity to comment, and we hope you will have a favorable response to our request to be provided more time so that the Pacific Council can fully engage in this review.

Sincerely,

D. O. McIsaac, Ph.D.  
Executive Director

JLS:

Cc:  
Council Members  
Kelly Denit  
Mike Travis

Attachment: Other Detailed Comment

**Page 1**

**Sablefish permit stacking program.** The guidelines list the Pacific sablefish permit stacking program as a review that is underway. That review was completed in June 2014, the date cited in footnote 11.

**Page 2**

**January 12, 2007.** Paragraph II.A states that the MSA requires “‘formal detailed’ review of all LAPPs established after January 12, 2007.” The January 12, 2007 date is cited numerous times in the document. As we understand it, on the one hand, the MSA provides a general exemption from the requirements of 303A “Limited Access Privilege Programs” for any program in place within 6 months after the date of enactment of the MSA reauthorization of 2006 (this would be six months after January 12, 2007). On the other hand, there is an exception to this exemption (303A(i) TRANSITION RULES) for the section of the MSA which requires periodic reviews (303A(C)(1)(g)). Section 303A(i) of the MSA states that programs implemented prior to six months after MSA reauthorization “shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation.” However, the draft policy goes on to state

For CSPs established prior to January 12, 2007, the requirement to initiate the first review within 5 years after establishment does not apply. As such the first review of these CSPs should be initiated no later than 7 years after the CS Policy went into effect (i.e. no later than the end of calendar year 2017)...

To provide clarity, additional explanation should be provided on the relationship between the dates in the guidelines and those in the MSA.

**Review within 5 years.** Paragraph II.A states “For CSPs established after January 12, 2007, the initial review must commence no later than 5 years after the program was established...” Later in the paragraph the deadline is restated as “the requirement to initiate the first review within 5 years after...” The draft guidelines appear to contradict the MSA requirement that an initial review be conducted “5 years *after* the implementation of the program” (303A(c)(1)(G)) (emphasis added). Five years *after* is not the same as “*within* 5 years after.”

**Page 3**

**Limit on the frequency of reviews.** The last sentence of Section II states that: “The Councils and NMFS ... should not conduct reviews more frequently than every 3 years for the purpose of complying with the MSA requirement or CS Policy.” The basis for this restriction is not apparent. While the Pacific Council does not anticipate doing reviews more frequently than once every 3 years, if the Council and NMFS determine that such a review is the best use of regional resources, it is not clear why the guidelines would preclude the occurrence of a more frequent review. If such a review were conducted, it should reset the clock on the next 7 year review period.

**Presumption of NMFS lead in developing the general plan for review.** In the second paragraph of IV.A, the statement that “For CSPs established by the Councils, it is recommended the appropriate Council(s) review a draft of the plan [general plan for the review] before it is finalized and significant work begins,” implies a presumed NMFS lead in the development of a plan rather than NMSF as a partner participating in a collective forum. This runs counter to the Pacific Council model.

**Planning for needed resources.** The last two sentences of the second paragraph of IV.A should be modified to account for Council/agency resource limitations (insertions indicated): “Whenever possible, a final plan should be completed no later than one year prior to initiating the review, as this will ensure adequate time is available to conduct any necessary supplementary/specialized data collections and acquire the resources needed to conduct the review. The timeline for conducting analyses associated with the review should take into account the availability of data, available resources, and the length of time necessary to complete those analyses.

### Page 5-6

**List of contents for the review.** The third paragraph of Section V.A provides a list of contents for the review. That list should be augmented to include “a summary of any unexpected effects (positive or negative) which do not fall under the program’s goals or objectives.”

### Page 7

**Use of “possible.”** In Section V.C (and perhaps elsewhere) the word “possible” (a word which does not take into account limited agency and Council resources) sets too high a bar for the recommended actions. Occurrences of possible should be replaced with more precise language. For example:

- “...make use of standardized performance indicators or metrics developed at the national level, to the extent ~~possible~~ that those indicators adequately describe the effects to be analyzed.”
- “To the extent ~~possible~~ that it is efficient and useful, reviews should...”
- “...make use of the NMFS Office of Science and Technology’s (S/T) economic and social performance indicators to the extent ~~possible~~ that it is useful and efficient.”

### Page 9

**“measurable (at least qualitatively).”** The meaning of qualitative measurement is not clear.

**Reference to “maximize net benefits.”** To be clear that non-pecuniary benefits are included in the assessment of net benefits, add a parenthetical identical to that in EO 12866: “(including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).”